

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**Presentment Date and Time**  
**March 1, 2011**  
**at 9:45 A.M.**

-----x  
**In re** :  
**Bankruptcy of Motors Liquidation Company** :  
**(f/k/a General Motors Corporation) ("MLC")** :  
 :  
**Debtor.** :  
-----x

**Chapter 11**  
**Case No. 09 - 50026 (REG)**

**RESPONSE TO DEBTOR'S 165<sup>th</sup> OMNIBUS OBJECTION TO CLAIMS AND  
MOTION REQUESTING ENFORCEMENT OF BAR DATE ORDERS**

Stanley R. Stasko respectfully states:

- 1) that Stanley R. Stasko received Debtor's 165<sup>th</sup> Omnibus Objection to Claims and Motion requesting enforcement of Bar Date Orders -- (See Exhibit #1)
- 2) the Debtor's 165<sup>th</sup> Omnibus Objection to Claims and Motion requesting enforcement included Claim #70285 by Stanley R. Stasko (Creditor) against General Motors Corporation (Debtor) -- (See Exhibit #2)
- 3) Claim #70285 by Stanley R. Stasko against General Motors Corporation should be removed from the Debtor's 165<sup>th</sup> Omnibus Objection to Claims and Motion requesting enforcement of Bar Date Orders because:
- 4) on April 8, 2010, the U.S. Bankruptcy Court -- S.D. of New York (Bankruptcy Court) considered Motion of Stanley R. Stasko for Relief from the Automatic Stay -- (See Court Transcript of April 8, 2010; Docket #5509)
- 5) also on April 21, 2010, the U. S. Bankruptcy Court -- S.D. of New York Denied the Motion of Stanley R. Stasko for Relief from the Automatic Stay -- (See Exhibit #3)
- 6) further General Motors Corporation has been notified that Stanley R. Stasko is Appealing the Entire Order Denying Motion of Stanley R. Stasko for Relief from the Automatic Stay -- (See Exhibit #3)

- 7) still further U. S. District Court – S.D. of New York has decided to Hear the Appeal by Stanley R. Stasko and has assigned the Appeal with Case # 1:10-CV-04322-JGK (Honorable John G. Koeltl)
- 8) still further Stanley R. Stasko (Appellant) has already filed the Appellant's Legal Brief (See Exhibit #4) and served a copy to General Motors Corporation (Appellee)
- 9) still further Appellant has already filed the Appellant's Response to Appellee's Legal Brief (See Exhibit #5) and served a copy to General Motors Corporation
- 10) therefore Claim #70285 by Stanley R. Stasko against General Motors Corporation should be removed from the Debtor's 165<sup>th</sup> Omnibus Objection to Claims and Motion requesting enforcement of Bar Date Orders because the U.S. District Court – S.D. of New York is Hearing the Appeal by Stanley R. Stasko

**PROOF of CLAIM and STANLEY R. STASKO CLAIM FILED AFTER BAR DATE ALREADY DISCUSSED in BANKRUPTCY COURT on APRIL 8, 2010**

- 11) the Proof of Claim issue was discussed by Judge Robert E Gerber of the U.S. Bankruptcy Court – S. D. of New York (the Bankruptcy Judge) when he stated “Mr. Stasko, I’m going to have to deny your motion for relief from the stay, both by reason of your failure to show that you’re entitled to that relief under the Second Circuit Sonnax factors and because you didn’t file a proof of claim” (Court Transcript of April 8, 2010; Page 31, Lines 18 - 22; Docket # 5509)
- 12) also Stanley R. Stasko Claim Filed after Bar Date was implied on page 40, lines 2 – 8, and 18 - 24 of the U.S. Bankruptcy Court – S.D. of New York Transcript of April 8, 2010, when Bankruptcy Judge Gerber purposefully publicly harasses the Stanley R. Stasko by stating “uniquely in my ten years as a judge, as a bankruptcy judge, and

forty years as a lawyer, this is the first time that I've had a fellow or an entity who actually filed litigation after the bankruptcy case was filed and then asked for relief from the stay to continue in the filing of – or prosecution of a litigation that should never have been filed in the first place ... now, I'll assume for the sake of discussion that you didn't know about the bankruptcy when you filed the action in the Eastern District of Michigan, but once you heard about it, proceeding to try to get a default against the debtor was just dead wrong. And because you're not a lawyer, I'm not going to use one of the stronger words that I would use, but that's real bad, okay?" (See Docket #5509)

13) further even though General Motors Corporation knows the civil suit has its genesis in CY2005 the legal counsel for General Motors Corporation **purposefully** makes a disingenuous statement on page 35, lines 19, 20, 21, and 22 of the U.S. Bankruptcy Court – S.D. of New York Transcript of April 8, 2010, when he states “this motion is based on a post-petition action that was filed in the District Court for the Eastern District of Michigan on December 11, 2009, significantly after the filing of our bankruptcy petition on June 1<sup>st</sup>, 2009.” (See Docket #5509)

14) still further the details of the genesis of civil suit *Stasko v General Motors Corporation* in the U. S. District Court – E.D. of Michigan in CY2005 was repeated in Appellant's Legal Brief – See Exhibit #4; Section “Civil Suit has its Genesis in CY2005”; Paragraphs 23 – 34

15) still further the delay between the genesis of civil suit *Stasko v General Motors Corporation* in CY 2005 and the filing of the Complaint of civil suit *Stasko v General Motors Corporation* on December 11, 2009, was also repeated in the Appellant's Legal Brief:

- a. Exhibit #4; Section “Mental Disability”; Paragraphs 35 -48
- b. Exhibit #4; Section “Pre-Civil Suit Meeting”; Paragraphs 49 – 55
- c. Exhibit #4; Section “Discovery Delays”; Paragraphs 56 – 64
- d. Exhibit #4; Section “Fraudulent Concealment”; Paragraphs 65 - 82

16) still further civil suit Stasko v General Motors Corporation being filed in the U. S.

District Court – E. D. of Michigan on December 11, 2009, seems insignificant when considering Stanley R. Stasko is a Pro Se Litigant

- a. See Exhibit #4; Section “Pro Se Litigant – Less Stringent Standard;  
Paragraphs 83 - 88

17) still further Stanley R. Stasko’s Proof of Claim being filed in the U. S. Bankruptcy

Court – S. D. of New York via U. S. Mail on April 28, 2010, seems insignificant when considering Stanley R. Stasko is a Pro Se Litigant

- a. See Exhibit #4; Section “Pro Se Litigant – Less Stringent Standard;  
Paragraphs 83 - 88

18) therefore Claim #70285 by Stanley R. Stasko against General Motors Corporation

should be removed from the Debtor’s 165<sup>th</sup> Omnibus Objection to Claims and Motion requesting enforcement of Bar Date Orders since the Proof of Claim and Stanley R. Stasko’s Claim filed after the Bar Date have already been discussed in the Bankruptcy Court on April 8, 2010, and the Appeal is actively being heard in the U.S. District Court – S.D. of New York

**ISSUES FROM DEBTOR'S OBJECTION TO CLAIMS AND MOTION**

**ACTUAL NOTICE OF BAR DATES**

- 19) in the Debtor's Objection to Claims and Motion the Debtor state "the Debtors timely published notice of the Bar Dates in each of the newspapers specified in the Bar Date Order." – (See Exhibit #1; Page #5)
- 20) a partial list from Debtors' Footnote #4 list publications like "*The Financial Times, The Wall Street Journal, The New York Times, USA Today, Detroit Free Press, ...*" – (See Exhibit #1; Page #5; Footnote #4)
- 21) the U. S. Bankruptcy Court – S.D. of New York should be informed that Stanley R. Stasko does not subscribe to publications like "*The Financial Times, The Wall Street Journal, The New York Times, USA Today, Detroit Free Press*"
- 22) also the U. S. Bankruptcy Court – S.D. of New York should be informed that Stanley R. Stasko does not even own what is commonly known as a television nor has he for years
- 23) therefore the publications listed would not be a typical avenue for Stanley R. Stasko to be informed regarding Bar Dates associated with General Motors Corporation Bankruptcy

**EXCUSABLE NEGLIGENCE**

- 24) in the Debtor's Objection to Claims and Motion the Debtor state "whether excusable neglect exists in any particular case hinges on five factors: (1) the degree of prejudice to the debtors; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the claimant; (4) whether the claimant acted in good faith; and
-

(5) if a claimant had counsel, whether a claimant should be penalized for their counsel's mistake or neglect - (See Exhibit #1; Page #8)

### **THE DEGREE OF PREJUDICE TO THE DEBTORS**

25) this factor is similar to the argument made by General Motors Corporation in the Appellee's Legal Brief filed in U. S. District Court – S.D. of New York

26) the Appellee stated "... the burden imposed on the Debtors in terms of the time, financial resources, and attention necessary to defend against the Michigan Action far outweighs any potential gain to Appellant in proceeding with the Michigan Action against the Debtors given that Appellant did not file a timely proof of claim against the Debtors and is therefore barred from seeking any recovery from the Debtors." (See Exhibit 5; Paragraph #21)

27) the U. S. Bankruptcy Court – S.D. of New York can find Stanley R. Stasko Response to the Appellee's statement in Exhibit #5; Section "Fraudulent Concealment"; Paragraphs #22-36

28) therefore the time, financial resources, and attention necessary to defend against the Michigan Action was self inflicted by General Motors Corporation when General Motors Corporation Fraudulently Concealed Stanley R. Stasko's accomplishments

### **THE LENGTH OF THE DELAY**

29) civil suit Stasko v General Motors Corporation was filed in the U. S. District Court – E.D. of Michigan on December 11, 2009, approximately (11) days after the Bar Date of November 30, 2009 (this seems insignificant when considering Stanley R. Stasko is

a Pro Se Litigant; See Exhibit #4; Section “Pro Se Litigant – Less Stringent Standard”; Paragraphs 83-88)

30) also Stanley R. Stasko’s Proof of Claim filed in the U. S. Bankruptcy Court – S. D. of New York via U. S. Mail on April 28, 2010, (5) months after the Bar Date of November 30, 2009 (this also seems insignificant when considering Stanley R. Stasko is a Pro Se Litigant; See Exhibit #4; Section “Pro Se Litigant – Less Stringent Standard”; Paragraphs 83-88)

31) further the U.S. District Court – S.D. of New York may ask the question - why the delay between the genesis of civil suit Stasko v General Motors Corporation in CY2005 and the filing of the complaint of civil suit Stasko v General Motors Corporation on December 11, 2009?

32) when Stanley R. Stasko motioned the U.S. Bankruptcy Court – S.D. of New York for Relief from the Automatic Stay he submitted to the Bankruptcy Court a copy on CD of the (500) plus pages of the original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan explaining in detail the unique situation of the civil suit (including his Mental Disability, the Discovery Delays, and the Fraudulent Concealment by General Motors Corporation)

33) therefore the U. S. Bankruptcy Court – S.D. of New York was informed of the reasons for the length of the delay

### **REASON FOR DELAY**

34) the delay between the genesis of civil suit Stasko v General Motors Corporation in CY 2005 and the filing of the Complaint of civil suit Stasko v General Motors Corporation on December 11, 2009, is repeated in the Appellant’s Legal Brief:

- a. See Exhibit #4; Section “Mental Disability”; Paragraphs 35 -48
  - b. See Exhibit #4; Section “Pre-Civil Suit Meeting”; Paragraphs 49 – 55
  - c. See Exhibit #4; Section “Discovery Delays”; Paragraphs 56 – 64
  - d. See Exhibit #4; Section “Fraudulent Concealment”; Paragraphs 65 - 82
- 35) also as mentioned above when Stanley R. Stasko motioned the U.S. Bankruptcy Court – S.D. of New York for Relief from the Automatic Stay he submitted to the Bankruptcy Court a copy on CD of the (500) plus pages of the original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan explaining in detail the unique situation of the civil suit (including his Mental Disability, the Discovery Delays, and the Fraudulent Concealment by General Motors Corporation)

**WHETHER A CLAIMANT ACTED IN GOOD FAITH**

- 36) Stanley R. Stasko fully plead the facts and circumstances surrounding his belated discovery and the delay in the original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan; and, Stanley R. Stasko submitted the (70) plus page explanation of the facts and circumstances from Exhibit #7 from Case #2:09-CV-14827 to the U.S. Bankruptcy Court – S. D. of New York
- 37) also Stanley R. Stasko submitted to the U.S. Bankruptcy Court – S.D. of New York the approximate (89) page resume of Exhibit 16 in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan when the Appellant motioned for Relief from the Automatic Stay in order to help the Bankruptcy Court understand the magnitude of the Fraudulent Concealment by General Motors Corporation)



- 38) further the U. S. Bankruptcy Court – S. D. of New York needs to understand when the Stanley R. Stasko motioned for Relief from the Automatic Stay the majority of the (500) plus pages of the original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan was written and / or compiled in CY2009 when Stanley R. Stasko memory cleared enough to defend his himself in the civil suit against General Motors Corporation
- 39) therefore Stanley R. Stasko acted in Good Faith by filing civil suit Stasko v General Motors Corporation on December 11, 2009, since his memory **just cleared enough to defend himself in CY2009** (emphasis added)

#### **IF A CLAIMANT HAD COUNSEL**

- 40) Stanley R. Stasko is a Pro Se Litigant in civil suit Stasko v General Motors Corporation Case #2:09-CV-14827
- 41) also Stanley R. Stasko is a Pro Se Litigant in U. S. Bankruptcy Court – S.D. of New York Case #09-50026 (REG)
- 42) further Stanley R. Stasko is a Pro Se Litigant in U. S. District Court – S.D. of New York Case #1:10-CV-04322-JGK

#### **CONCLUSION**

- 43) Stanley R. Stasko respectfully requests that Claim #70285 by Stanley R. Stasko against General Motors Corporation be removed from the Debtor's 165<sup>th</sup> Omnibus Objection to Claims and Motion requesting enforcement of Bar Date Orders for the reasons given above


44) also if the U. S. Bankruptcy Court – S.D. of New York decision is against Stanley R.

Stasko, then Stanley R. Stasko automatically Appeals the decision to U. S. District  
Court – S.D. of New York Case #1:10-CV-04322-JGK

45) further Stanley R. Stasko requests another Bankruptcy Judge hear the Motion and

Stanley R. Stasko Response because Judge Robert E. Gerber purposefully publicly  
harasses Stanley R. Stasko by stating “uniquely in my ten years as a judge, as a  
bankruptcy judge, and forty years as a lawyer, this is the first time that I’ve had a  
fellow or an entity who actually filed litigation after the bankruptcy case was filed  
and then asked for relief from the stay to continue in the filing of – or prosecution of a  
litigation that should never have been filed in the first place ... now, I’ll assume for  
the sake of discussion that you didn’t know about the bankruptcy when you filed the  
action in the Eastern District of Michigan, but once you heard about it, proceeding to  
try to get a default against the debtor was just dead wrong. And because you’re not a  
lawyer, I’m not going to use one of the stronger words that I would use, but that’s real  
bad, okay?” (Bankruptcy Court Transcript of April 8, 2010; Page 40, Lines 2-8 and  
18-24; Docket # 5509)

Dated: February 9, 2011



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Stanley R. Stasko  
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Southfield, Michigan 48076  
Telephone # 313-670-6917  
Pro Se Litigant

Exhibit - 1

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Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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	:
In re	:
	:
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	:
f/k/a General Motors Corp., <i>et al.</i>	:
	:
Debtors.	:
	:
-----X	

Chapter 11 Case No.  
09-50026 (REG)  
(Jointly Administered)

**DEBTORS' 165TH OMNIBUS OBJECTION TO CLAIMS  
AND MOTION REQUESTING ENFORCEMENT OF BAR DATE ORDERS**  
(Late-Filed Claims)

**THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE CERTAIN FILED PROOFS OF CLAIM.  
CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR NAMES AND CLAIMS ON THE  
EXHIBIT ANNEXED TO THIS OBJECTION.**

TO THE HONORABLE ROBERT E. GERBER,  
UNITED STATES BANKRUPTCY JUDGE:

Motors Liquidation Company (f/k/a General Motors Corporation) ("MLC") and  
its affiliated debtors, as debtors in possession (collectively, the "**Debtors**"), respectfully  
represent:

**Relief Requested**

1. The Debtors file this 165th omnibus objection to certain claims and motion requesting enforcement of the Bar Date Orders (as defined below) (the “**165th Omnibus Objection to Claims**”) pursuant to section 502(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), this Court’s order approving procedures for the filing of omnibus objections to proofs of claim filed against the Initial Debtors (as defined below) (the “**Procedures Order**”) (ECF No. 4180), this Court’s order deeming the Procedures Order applicable to the REALM/ENCORE Debtors (as defined below) (the “**REALM/ENCORE Order**”) (ECF No. 4841), this Court’s order approving the procedures relating to the filing of proofs of claim against the Initial Debtors (the “**Initial Debtors Bar Date Order**”) (ECF No. 4079), this Court’s order approving the procedures relating to the filing of proofs of claim against the REALM/ENCORE Debtors (the “**REALM/ENCORE Bar Date Order**”) (ECF No. 4586), and this Court’s supplemental order to the Initial Debtors Bar Date Order approving the procedures relating to the filing of proofs of claim with respect to certain properties of the Debtors (ECF No. 4681) (the “**Property Bar Date Order**,” and collectively with the Initial Debtors Bar Date Order and the REALM/ENCORE Bar Date Order, the “**Bar Date Orders**”) seeking entry of an order disallowing and expunging the claims listed on **Exhibit “A”** annexed hereto.<sup>1</sup>

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<sup>1</sup> Creditors can obtain copies of the cover page of any proof of claim filed against the Debtors’ bankruptcy estates on the Debtors’ claims register on the website maintained by the Debtors’ claims agent, [www.motorsliquidation.com](http://www.motorsliquidation.com). A link to the claims register is located under the “Claims Information” tab. Creditors without access to the Internet may request a copy of the cover page of any proof of claim by mail to The Garden City Group, Inc., Motors Liquidation Company Claims Agent, P.O. Box 9386, Dublin, Ohio 43017-4286 or by calling The Garden City Group, Inc. at 1-703-286-6401.

2. The Debtors have examined the proofs of claim identified on Exhibit "A" and have determined that the proofs of claim listed under the heading "*Claims to be Disallowed and Expunged*" (collectively, the "**Late-Filed Claims**") were received after the Bar Date (as defined below) from claimants who, despite not having received actual notice of the Bar Date Orders, received adequate and sufficient notice of the Bar Date Orders by publication (collectively, the "**Unknown Creditors**"). As the Late-Filed Claims fail to comply with the Bar Date Orders, the Debtors request that, consistent with the express terms of the Bar Date Orders, the Late-Filed Claims be disallowed and expunged in their entirety. Furthermore, the Debtors reserve all of their rights to object on any other basis to any Late-Filed Claims as to which the Court does not grant the relief requested herein.

#### **Jurisdiction**

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

#### **Background**

4. On June 1, 2009, four of the Debtors (the "**Initial Debtors**")<sup>2</sup> commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code, and on October 9, 2009, two additional Debtors (the "**REALM/ENCORE Debtors**")<sup>3</sup> commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code, which cases are jointly administered with those of the Initial Debtors under Case Number 09-50026. On September 15, 2009, the Initial Debtors filed their schedules of assets and liabilities and statements of financial affairs,

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<sup>2</sup> The Initial Debtors are MLC, MLCS, LLC (f/k/a Saturn, LLC), MLCS Distribution Corporation (f/k/a Saturn Distribution Corporation), and MLC of Harlem, Inc. (f/k/a Chevrolet-Saturn of Harlem, Inc.).

<sup>3</sup> The REALM/ENCORE Debtors are Remediation and Liability Management Company, Inc., and Environmental Corporate Remediation Company, Inc.

which were amended on October 4, 2009. On October 15, 2009, the REALM/ENCORE Debtors filed their schedules of assets and liabilities and statements of financial affairs.

5. On September 16, 2009, this Court entered the Initial Debtors Bar Date Order establishing November 30, 2009 as the deadline for each person or entity to file a proof of claim in the Initial Debtors' cases, including governmental units (the "**Initial Debtors Bar Date**"). On December 2, 2009, this Court entered the REALM/ENCORE Bar Date Order establishing February 1, 2010 (the "**REALM/ENCORE Bar Date**") as the deadline for each person or entity to file a proof of claim in the REALM/ENCORE Debtors' cases (except governmental units, as defined in section 101(27) of the Bankruptcy Code, for which the Court established April 16, 2010, the "**REALM/ENCORE Governmental Bar Date**"). On December 18, 2009, this Court entered the Property Bar Date Order establishing February 10, 2010 as the deadline for entities residing adjacent to or in the proximity of certain material manufacturing properties of the Debtors (the "**Properties**") to file a proof of claim with respect to the Properties (the "**Property Bar Date**," and collectively with the Initial Debtors Bar Date, the REALM/ENCORE Bar Date, and the REALM/ENCORE Governmental Bar Date, the "**Bar Dates**").

6. Each of the Bar Date Orders specifically provides that, in order to be timely-filed, proofs of claim must be "**actually received**" by the Debtors' claims agent or the Court, on or before the applicable Bar Date. (Initial Debtors Bar Date Order at 3 (emphasis in original); REALM/ENCORE Bar Date Order at 3 (emphasis in original); Property Bar Date Order at 2 (emphasis in original).) The Bar Date Orders also expressly provide that any holder of a claim against the Debtors who is required, but fails, to file a proof of such claim on or before the applicable Bar Date shall forever be barred, estopped, and enjoined from asserting such claim

against any of the Debtors and their respective estates. (Initial Debtors Bar Date Order at 5; REALM/ENCORE Bar Date Order at 5; Property Bar Date Order at 4.)

7. In addition to requiring the Debtors to provide actual notice of the Bar Date to all parties known to have claims against the Debtors, each of the Bar Date Orders authorized the Debtors to provide notice of the Bar Date by publication, which, as provided for in the Bar Date Orders, “shall be deemed good, adequate and sufficient publication notice of [the Bar Date] and the procedures for filing Proofs of Claim in these cases[.]” (Initial Debtors Bar Date Order at 7; REALM/ENCORE Bar Date Order at 7; Property Bar Date Order at 5.) The Debtors timely published notice of the Bar Dates in each of the newspapers specified in the Bar Date Orders.<sup>4</sup> (See Affidavits of Publication, ECF Nos. 3522, 4290, 4724 and 4877.)

8. After the applicable Bar Date, the Late-Filed Claims were periodically received from the Unknown Creditors who did not receive actual notice of the Bar Date Orders because they were unknown to the Debtors as having potential claims and, furthermore, the Debtors could not have known of the potential claims of the Unknown Creditors, and/or their identity, through an inspection of their books and records or other reasonable investigation.

**The Relief Requested Should Be Approved by the Court**

9. Section 502(b)(9) of the Bankruptcy Code provides that, upon the objection of a party in interest, a claim shall be disallowed to the extent that “proof of such claim

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<sup>4</sup> The Initial Debtors Bar Date Order authorized the Debtors to provide notice by publication in the *Financial Times*, *The Wall Street Journal* (Global Edition—North America, Europe, and Asia), *The New York Times* (National), *USA Today* (Monday through Thursday, National), *Detroit Free Press/Detroit News*, *Le Journal de Montreal* (French), *Montreal Gazette* (English), *The Globe and Mail* (National), and *The National Post*. The REALM/ENCORE Bar Date Order authorized the Debtors to provide notice by publication in *USA Today* (National Edition) *The New York Times* (National Edition), *Detroit Free Press*, *Bay City Times*, *Commercial News*, *Flint Journal*, *Saginaw News*, *The Chronicle-Telegram*, *Observer & Eccentric*, *The Toledo Blade*, *Kansas City Business Journal*, *Syracuse New Times*, *Dayton Daily News*, *Ypsilanti Courier*, *Tonawanda News*, and *The News-Herald*. The Property Bar Date Order authorized the Debtors to provide notice by publication in *Flint Journal*, *The Oakland Press*, *Free Lance Star*, *Observer & Eccentric*, *Parma Sun Post*, *Ypsilanti Courier*, *Dayton Daily News*, *Delaware Business Ledger*, *Saginaw News*, *Shreveport Times*, *The Grand Rapids Press*, *The Indianapolis Star*, *Mansfield News Journal*, and *Pittsburgh Post Gazette*.



is not timely filed.” 11 U.S.C. § 502(b)(9). Pursuant to Bankruptcy Rule 3003(c)(3), a proof of claim is not timely filed unless it is done so “prior to a bar date established by order of a bankruptcy court.” *In re XO Commc’n, Inc.*, 301 B.R. 782, 791 (Bankr. S.D.N.Y. 2003); Fed. R. Bankr. P. 3003(c)(3).<sup>5</sup> Such a bar date is meant to “function as a statute of limitations and effectively [disallows] late claims in order to provide the Debtor and its creditors with finality to the claims process and permits the Debtor to make swift distributions under the Plan.” *XO Commc’n*, 301 B.R. at 797.

10. One of the very few occasions when a late-filed claim will not be disallowed is where a claimant can establish that notice afforded to the claimant of a bar date order failed to comply with constitutional principles of due process. Such principles, however, do not require that a claimant receive actual notice in all instances. Rather, the standard applicable in bankruptcy and nonbankruptcy proceedings alike is whether there was notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action.” *Id.* at 792 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In applying that standard, the Supreme Court has stated:

This Court has not hesitated to approve of resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning. Thus, it has been recognized that, in the case of persons missing or unknown, employment of an indirect, and even a probably futile, means of notification is all that the situation permits, and creates no constitutional bar to a final decree foreclosing their rights.

*Mullane*, 339 U.S. at 317 (citations omitted). As applied to bar date orders in the bankruptcy context, the Supreme Court’s interpretation regarding the sufficiency of notice compels the result that, while actual notice of a bar date must be provided to “a creditor ‘known’ to a debtor,” *XO*

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<sup>5</sup> Moreover, Bankruptcy Rule 3007(d)(4) provides that an omnibus objection may be made with respect to claims that were “not timely filed[.]” Fed. R. Bankr. P. 3007(d)(4).

*Commc'n*, 301 B.R. at 792, “[f]or obvious reasons debtors need not provide actual notice to unknown creditors . . . [who are] entitled to no more than constructive notice (i.e., notice by publication) of the bar date.” *In re Drexel Burnham Lambert Group Inc.*, 151 B.R. 674, 681 (Bankr. S.D.N.Y. 1993) (parenthetical in original).

11. In differentiating between a “known” creditor and an “unknown” creditor, the guiding principle is that the latter is one whose identity and/or claim is not “reasonably ascertainable” or is merely conceivable, conjectural or speculative.” *XO Commc'n*, 301 B.R. at 793 (citation omitted). In turn, a creditor’s identity or claim is not “reasonably ascertainable” if it cannot be uncovered by a debtor through “reasonably diligent efforts.” *Id.* (citing *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 n.4 (1983)). However, a debtor need not engage in extended searches where the effectiveness of such a search is outweighed by its practical difficulties or high cost. *Mullane*, 339 U.S. at 317 (notice not required to those who could be discovered upon investigation but do not, in “due course of business[,] come to knowledge”). Rather, the requisite search “focuses on the debtor’s own books and records. Efforts beyond a careful examination of these documents are generally not required.” *XO Commc'n*, 301 B.R. at 793 (quoting *Chemetron Corp. v. Jones*, 72 F.3d 341, 347 (3d Cir. 1995)).

12. A review of the Late-Filed Claims reveals that each of the Unknown Creditors was “unknown” to the Debtors. Whether based on the Debtors’ books and records or otherwise, the Debtors did not know of the identity of the Unknown Creditors and/or that such Unknown Creditors had a potential claim. As such, with respect to the Unknown Creditors, actual notice was neither required nor practicable, and notice by publication was sufficient.

13. A subsequent question may arise as to whether there were extraordinary circumstances sufficient to constitute “excusable neglect” to justify extending the time for the

Late-Filed Claims to be filed. *XO Commc'n, Inc.*, 301 B.R. at 791. However, pursuant to Bankruptcy Rule 9006(b)(1), such relief can only be granted “on motion” by the Unknown Creditors. Fed. R. Bankr. P. 9006(b)(1). Moreover, the burden would then be “on the claimants to prove that he or she did not timely file the proofs of claim because of excusable neglect.” *XO Commc'n*, 301 B.R. at 795; *Drexel*, 151 B.R. at 680 (when a party moves for an extension after the bar date, “that party must show” excusable neglect).

14. None of the Unknown Creditors have moved for an extension under Bankruptcy Rule 9006(b)(1). Even if they did, it is unlikely that any of the Unknown Creditors could make a showing that rises to the level of “excusable neglect.” As set forth by the United States Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, whether excusable neglect exists in any particular case hinges on five factors: (1) the degree of prejudice to the debtors; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the claimant; (4) whether the claimant acted in good faith; and (5) if a claimant had counsel, whether a claimant should be penalized for their counsel’s mistake or neglect. 507 U.S. 380, 385-87 (1993). In other words, simple inadvertence is not sufficient grounds. In applying *Pioneer*, the Second Circuit has adopted what can be characterized as a hard line test for determining whether a party’s neglect is excusable. *In re Enron Corp.*, 419 F.3d 115, 122-23 (2d Cir. 2005). The Second Circuit cautions that rarely will the equities favor a claimant who fails to follow a clear court rule. *Id.* at 123.

15. Here, certain of the *Pioneer* factors weigh heavily against a finding of excusable neglect. As to the first factor (degree of prejudice to a debtor), it must be noted that the Debtors have already filed, and even amended, their joint chapter 11 plan (the “**Plan**”) and

the hearing to consider confirmation of the Plan is scheduled for March 3, 2011. It would be severely prejudicial to other claimants and these judicial proceedings to now have to reserve distributions while the standards of excusable neglect and the allowance of the Late-Filed Claims are adjudicated. As to the second factor under *Pioneer* (the length of delay), a court may consider not only when a claim was filed in relation to a bar date, but also how long a claimant waited after the bar date to finally request an extension for its late-filed claim under Bankruptcy Rule 9006(b). *In re Kmart Corp.*, 381 F.3d 709, 714 (7th Cir. 2004). Here, considering that none of the Unknown Creditors have requested an extension, the delay attributable to each of them at this point ranges from 11 to 13 months.<sup>6</sup>

16. Ultimately, “[b]ar dates are ‘critically important to the administration of a successful chapter 11 case.’” *In re Lehman Bros. Holdings, Inc.*, No. 08-13555, 2010 WL 2000326, at \*2 (Bankr. S.D.N.Y. May 20, 2010) (quoting *In re Musicland Holding Corp.*, 356 B.R. 603, 607 (Bankr. S.D.N.Y. 2006)). A bar date enables debtors to determine with reasonable promptness, efficiency, and finality what claims will be made against their estates so that distributions to holders of allowed claims can be made as soon as possible. *See In re Keene Corp.*, 188 B.R. 903, 907 (Bankr. S.D.N.Y. 1995). Because the Late-Filed Claims fail to comply with the Bar Date Orders and are thus untimely, the Debtors request that the Court enforce its prior Bar Date Orders and disallow and expunge in their entirety the Late-Filed Claims listed on Exhibit “A.”

#### **Notice**

17. Notice of this 165th Omnibus Objection to Claims has been provided to each claimant listed on Exhibit “A” and parties in interest in accordance with the Fifth Amended

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<sup>6</sup> The Bar Dates range from November 30, 2009 (Initial Debtors Bar Date) to February 10, 2010 (Property Bar Date).

Order Pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 1015(c) and 9007 Establishing Notice and Case Management Procedures, dated January 3, 2011 (ECF No. 8360). The Debtors submit that such notice is sufficient and no other or further notice need be provided.

18. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York  
January 26, 2011

/s/ Joseph H. Smolinsky  
Harvey R. Miller  
Stephen Karotkin  
Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

Attorneys for Debtors  
and Debtors in Possession

Exhibit - 2

Name and Address of Claimant	Claim #	Debtor	Claim Amount and Priority (1)	Grounds For Objection	Objection Page Reference
STANLEY R STASKO 27653 LEXINGTON PKWY SOUTHFIELD, MI 48076	70285	Motors Liquidation Company	\$0.00 (S) \$0.00 (A) \$0.00 (P) \$2,775,266.00 (U) \$2,775,266.00 (T)	Late-Filed Claim	Pgs. 1-5

**Additional Claim Information**

Applicable Bar Date: 11/30/2009  
Postmark Date: N/A  
Official Claim Date: 5/12/2010

STATE AUTO INSURANCE CLAIM# SMT-0290621 1300 WOODLAND AVE WEST DES MOINES, IA 50265	70112	Motors Liquidation Company	\$0.00 (S) \$0.00 (A) \$0.00 (P) \$26,271.52 (U) \$26,271.52 (T)	Late-Filed Claim	Pgs. 1-5
--	-------	----------------------------------	--	------------------	----------

**Additional Claim Information**

Applicable Bar Date: 11/30/2009  
Postmark Date: N/A  
Official Claim Date: 3/11/2010

(1) In the "Claim Amount and Priority" column, (S) = secured claim, (A) = administrative expense claim, (P) = priority claim, (U) = unsecured claim and (T) = total claim. The amounts listed are taken directly from the proofs of claim, and thus replicate any mathematical errors on the proofs of claim. Where the claim amount is zero, unliquidated, unidentified, or otherwise cannot be determined, the amount listed is "0.00".

(2) Claims on the exhibit are sorted in alphabetical order based on the creditor name as listed on proof of claim form.

Exhibit - 3



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**STANLEY R. STASKO**

**27653 Lexington Pkwy Southfield, Michigan 48076**

**#313-670-6917**

**Appellant**

**Creditor – U.S. Bankruptcy Court – S.D. of N.Y.; Case # 09-50026 (REG)**

**Plaintiff – U.S. District Court – E.D. of Mich.; Case # 2:09-CV-14827**

**Pro Se Litigant**

**V**

Case No. \_\_\_\_\_  
Honorable \_\_\_\_\_

**MOTORS LIQUIDATION COMPANY**

**(f/k/a GENERAL MOTORS CORPORATION)**

**Weil, Gotshal & Manges LLP**

**767 Fifth Avenue**

**New York, New York 10153**

**#212-310-8000**

**Appellee**

**Debtor – U.S. Bankruptcy Court – S.D. of N.Y.; Case # 09-50026 (REG)**

**Defendant – U.S. District Court – E.D. of Mich.; Case # 2:09-CV-14827**

**Attorney for Debtors**


**And Debtors in Possession**

**NOTICE OF APPEAL**

Stanley R. Stasko, the Appellant and Creditor, appeals the entire Order Denying Motion of Stanley R. Stasko for Relief from the Automatic Stay signed by Honorable Robert E. Gerber, United States Bankruptcy Judge of the Southern District of New York on April 21, 2010 (Docket #5532).

The names, addresses, and telephone numbers of the parties to be served are listed below.

Dated: April 30, 2010

  
\_\_\_\_\_  
Stanley R. Stasko  
27653 Lexington Pkwy Southfield, Michigan 48076  
#313-670-6917  
Appellant - Pro Se Litigant

List of parties to be served:

Stanley R. Stasko  
27653 Lexington Pkwy  
Southfield, Michigan 48076  
Telephone: (313) 670-6917  
Appellant and Creditor  
Pro Se Litigant

Motors Liquidation Company  
(f/k/a General Motors Corporation)  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Appellee and Debtor

Attorney for Debtors  
and Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re	: Chapter 11 Case No.
	:
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	: 09-50026 (REG)
f/k/a General Motors Corp., <i>et al.</i>	:
	:
Debtors.	: (Jointly Administered)
	:
-----X	

**ORDER DENYING MOTION OF STANLEY R. STASKO FOR RELIEF FROM  
THE AUTOMATIC STAY**

Upon the motion, dated February 19, 2010 of Stanley R. Stasko [Docket No. 5151] (the "**Motion**"), requesting relief from the automatic stay to proceed with case number 09-14827 (the "**Michigan Case**"), currently pending in the United States District Court for the Eastern District of Michigan (the "**Michigan Court**"), all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the requested relief in accordance with 28 U.S.C. §§ 157 and 1334 and the Standing Order M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and Motors Liquidation Company and its affiliated debtors having filed their opposition to the Motion [Docket No. 5390] (the "**Opposition**"); and the Court having held a hearing to consider the requested relief on April 8, 2010 (the "**Hearing**"); and based upon the

Motion, the Opposition, and the record of the Hearing, and all of the proceedings before the Court, it is

ORDERED that for the reasons set forth on the record of the Hearing, the Motion is DENIED; and it is further

ORDERED that Mr. Stasko shall give notice of this ruling to the Michigan Court; and it is further

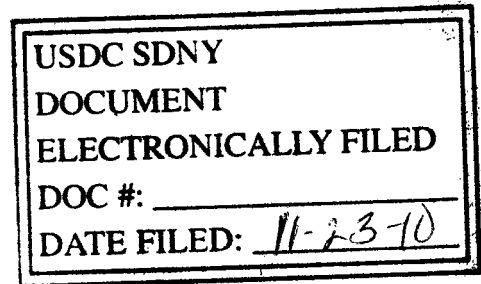
ORDERED that Mr. Stasko shall withdraw the Michigan Case; and it is further

ORDERED this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York  
April 21, 2010

s/ Robert E. Gerber  
THE HONORABLE ROBERT E. GERBER  
UNITED STATES BANKRUPTCY JUDGE

Exhibit - 4



PRO SE OFFICE

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**STANLEY R. STASKO**

**27653 Lexington Pkwy Southfield, Michigan 48076**

**#313-670-6917**

**Appellant**

**Creditor – U.S. Bankruptcy Court – S.D. of N.Y.; Case # 09-50026 (REG)**

**Plaintiff – U.S. District Court – E.D. of Mich.; Case # 2:09-CV-14827**

**Pro Se Litigant**

**V**

**Case No. 1:10-CV-04322-JGK**

**Honorable John G. Koeltl**

**MOTORS LIQUIDATION COMPANY**

**(f/k/a GENERAL MOTORS CORPORATION)**

**Weil, Gotshal & Manges LLP**

**767 Fifth Avenue New York, New York 10153-0119**

**#212-310-8000**

**Appellee / Attorney for Debtors and Debtors in Possession**

**Debtor – U.S. Bankruptcy Court – S.D. of N.Y.; Case # 09-50026 (REG)**

**Defendant – U.S. District Court – E.D. of Mich.; Case # 2:09-CV-14827**

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
NOV 23 2010

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### **APPELLANT'S LEGAL BRIEF**

Stanley R. Stasko (Appellant) respectfully states:

#### **BURDEN OF PROOF**

1) in the Debtor's Opposition to Stasko's Automatic Stay Motion Section II, Paragraph #15 the Debtor states "Movant (Stanley R. Stasko) should also be denied relief from the stay because he has failed to demonstrate cause to lift the stay." (Docket # 5390)

2) the Judge Robert E Gerber of the U.S. Bankruptcy Court – S. D. of New York (the Bankruptcy Judge) stated "Mr. Stasko, I'm going to have to deny your motion for relief from the stay, both by reason of your failure to show that you're entitled to that relief under the Second Circuit Sonnox factors" (Court Transcript of April 8, 2010; Page 31, Lines 18 - 21; Docket # 5509)

3) first, the United States Bankruptcy Code 11 U.S.C.A. Section 362 (g) (1) and (g) (2) states "in any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues."

4) also the Bankruptcy Judge failed to realize that the U.S. Bankruptcy Court – S. D. of New York in Re ENRON Corp. 306 B.R. 465 stated "on a motion to modify the automatic stay is a shifting one. Sonnax, 907 F.2d at 1285. The initial burden rests on the movant to show cause to modify the stay. Bogdanovich, 292 F.3d at 110; Mazzeo, 167 F.3d at 142; Sonnox, 907 F.2d at 1285. Only if the movant makes an initial showing of



cause does the burden then shift to the party opposing the relief. Mazzeo, 167 F.3d at 142.”

**SHALL GRANT RELIEF FROM STAY FOR CAUSE**

5) the term for “cause” can be found in the U.S. Bankruptcy Code 11 U.S.C.A. Section 362 (d)(1) which states “on request of a party in interest and after notice and a hearing, the court **shall grant relief** (emphasis added) from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest”

6) also the Bankruptcy Judge also failed to realize that the U.S. Bankruptcy Court – S. D. of New York in Re ENRON Corp. 306 B.R. 465 stated “once a legally sufficient basis, or cause, is demonstrated by the movant, the party opposing the relief **must prove that it is entitled** (emphasis added) to the continuing protections of the automatic stay. In re M.J. & K. Co., Inc., 161 B.R. 586, 590 (Bankr.S.D.N.Y.1993)”

7) further the Bankruptcy Judge failed to realize that the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) also recognized that the United States Bankruptcy Code “places burden of proof on the debtor for all issues other than debtor’s equity in property”

8) still further the Bankruptcy Judge failed to realize that the U.S. Court of Appeals – Sixth Circuit in In re Newpower, 233 F.3d 922 stated “the automatic stay imposed by the filing of a bankruptcy petition **shall be lifted** (emphasis added) upon motion by a party in interest in cases where (1) the party can show cause ...”

9) since the Appellant filed a Proof of Claim with the U.S. Bankruptcy Court – S. D. of New York via U.S. Mail on April 28, 2010. (See Exhibit # 1),

and since the United States Bankruptcy Code places the **Burden of Proof** (emphasis added) for all issues on the debtor,

and since the legal counsel for General Motors Corporation did not prove why Appellant should be denied Relief from the Automatic Stay;

10) therefore, the Order by the Bankruptcy Judge Denying Motion of Stanley R. Stasko for Relief from the Automatic Stay (Docket #5532) should be reversed.

**JURISDICTION OF DISTRICT COURT HIGHER THAN BANKRUPTCY COURT**

11) in the Bankruptcy Judge's Order Denying Motion of Stanley R. Stasko for Relief from the Automatic Stay (Docket # 5532) the Bankruptcy Judge stated "the Motion being a core proceeding pursuant to 28 U.S.C. Section 157(b); and venue being proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409"

12) the phrase **venue being proper** is the Bankruptcy Judge's opinion that he has jurisdiction whereby he can Order Mr. Stasko to "withdraw the Michigan Case" (Docket #5532) (the Michigan Case being civil suit Stasko v General Motors Corporation in U.S. District Court – E. D. of Michigan; Case #2:09-CV-14827.)

13) this is the second error by the Bankruptcy Judge in ordering Mr. Stasko to withdraw civil suit Stasko v General Motors Corporation in U.S. District Court – E. D. of Michigan. The U.S. District Court – E.D. of Louisiana in Eubanks v Esenjay Petroleum Corp. (152 B.R. 459) states that "if inquiry is whether federal district court's **bankruptcy jurisdiction over a civil proceeding arises under, arises in, or is related to cases under Title 11, it is irrelevant whether particular proceeding is "core" or**

**“noncore”; district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11. 28 U.S.C.A. § 1334(a, b).”**

14) also Eubanks v Esenjay Petroleum Corp. (152 B.R. 459) also states that **“proceedings that are outside scope of statute which gives federal district court bankruptcy jurisdiction over all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 cannot be referred to bankruptcy court by federal district court. 28 U.S.C.A. § 157.”**

15) further the U.S. District Court – E. D. of Louisiana based its interpretation of Section 157 on the legislative progeny of the **United States Supreme Court's** decision in Northern Pipeline v. Marathon, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982)

16) still further civil suit Stasko v General Motors Corporation is based on Title 42 U.S.C. Section 1983 which states “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”

17) since Title 42 U.S.C. Section 1983 is not base on U.S. Bankruptcy Code the Bankruptcy Judge does not have the jurisdiction to Order Mr. Stasko to withdraw civil

suit *Stasko v General Motors Corporation* from the U.S. District Court – E. D. of Michigan; therefore, the Bankruptcy Judge’s Order should be voided.

### **CORE and NON-CORE PROCEEDINGS**

18) in the Bankruptcy Judge’s Order Denying Motion of Stanley R. Stasko for Relief from the Automatic Stay (Docket # 5532) the Bankruptcy Judge stated “the Motion being *core proceeding pursuant to 28 U.S.C. Section 157(b); and venue being proper before this Court pursuant to 28 U.S.C. Sections 1408 and 1409*”

19) the phrase the proceeding is a **core proceeding** is the Bankruptcy Judge’s opinion that he has the jurisdiction whereby he can Order Mr. Stasko to withdraw civil suit *Stasko v General Motors Corporation* in U.S. District Court – E. D. of Michigan

20) this is the third error by the Bankruptcy Judge. The U.S. Court of Appeals – Fifth Circuit in the Matter of James P. Wood M.D. (825 F.2d 90, 91; 5<sup>th</sup> Cir. 1987) states “if proceeding involves right created by federal bankruptcy law, or is one which **would only arise in bankruptcy**, (emphasis added) it is core proceeding, **but if proceeding does not invoke substantive right created by federal bankruptcy law and is one that could exist outside of bankruptcy, it is noncore proceeding, though it may be related to bankruptcy because of its potential effect on debtor’s estate. 28 U.S.C.A. § 157.**

21) since civil suit *Stasko v General Motors Corporation* in U.S. District Court – E. D. of Michigan is based on Title 42 USC Section 1983 and is not a right created by federal bankruptcy law; therefore, civil suit *Stasko v General Motors Corporation* is non-core bankruptcy court proceeding

22) and the Bankruptcy Judge does not have the jurisdiction to Order Mr. Stasko to withdraw civil suit *Stasko v General Motors Corporation* from the U.S. District Court – E. D. of Michigan; therefore, the Bankruptcy Judge’s Order should be voided.

**CIVIL SUIT HAS ITS GENESIS IN CY2005**

23) on page 35, lines 19, 20, 21, and 22 of the U.S. Bankruptcy Court – S.D. of New York Transcript of April 8, 2010, the legal counsel for General Motors Corporation stated “this motion is based on a post-petition action that was filed in the District Court for the Eastern District of Michigan on December 11, 2009, significantly after the filing of our *bankruptcy petition on June 1<sup>st</sup>, 2009.*” (See Docket #5509)

24) this statement by General Motors Corporation’s legal counsel is disingenuous since the civil suit against General Motors Corporation has its genesis in CY2005

25) the Appellant first began to discover the injury and loss he incurred by General Motors Corporation when the Appellant **for the first time** (emphasis added) requested a complete copy of all employment records pertaining to his work for General Motors Corporation on July 20, 2005. (See Original Civil Suit Complaint Exhibit 10, 11, and 12 of *Stasko v General Motors Corporation*; duplicated in Exhibit #2 for convenience)

26) General Motors Corporation did not respond to the letter dated July 20, 2005.

27) the Appellant made a second request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 8, 2005. (See Exhibit #2)

28) General Motors Corporation did not respond to the second request letter dated August 8, 2005.

29) the Appellant made a third request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 24, 2005. (See Exhibit #2)

30) the U.S. District Court – S.D. of New York should note that in the third request the Appellant states “Stanley R. Stasko requests this information to: ...look for possible

discrimination by General Motors against Stanley R. Stasko (it is Stanley R. Stasko opinion that he can compile a reasonable argument that he should have been one or more levels higher than he was at the time of his departure).” (See Exhibit #2)

31) further note that Stanley R. Stasko informed General Motors Legal Staff in CY2005 of a possible lawsuit by sending a copy of this letter to: Dan Galnat, Attorney, General Motors – Global Headquarters...” (See Exhibit #2)

32) still further “**now that the plaintiff (Stanley R. Stasko) has implied a possible lawsuit,** (emphasis added) the defendant (General Motors Corporation) responded by mailing a package of information to the Appellant FedEx Trk # 8464-9619-6310.”

33) since civil suit Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan has its genesis when the Appellant first requested a complete copy of all employment records pertaining to his work for General Motors Corporation on July 20, 2005. This is years before June 1, 2009, the date General Motors Corporation commenced a voluntary case under Chapter 11 of Title 11 of the United States Code. This is years before the Bankruptcy Court established November 30, 2009, as (the “Bar Date Order”) on September 16, 2009. This is years before the Appellant filed civil suit against General Motors Corporation in Stasko v General Motors Corporation on December 11, 2009.

34) therefore the Order by the Bankruptcy Judge should be reversed and the Appellant’s Motion for Relief from the Automatic Stay should be granted because the civil suit Stasko v General Motors Corporation in the U.S. District Court – E. D. of Michigan has its genesis in CY2005 when General Motors Corporation was first informed of a possible lawsuit.



### **MENTAL DISABILITY**

35) the U.S. District Court – S.D. of New York may ask the question - why the delay between the genesis of civil suit Stasko v General Motors Corporation in CY2005 and the filing of the complaint of civil suit Stasko v General Motors Corporation on December 11, 2009?

36) when the Appellant motioned the U.S. Bankruptcy Court – S.D. of New York for Relief from the Automatic Stay he submitted to the Bankruptcy Court a copy on CD of the (500) plus pages of the original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan explaining in detail the unique situation of the civil suit (including the Appellant's Mental Disability, the Discovery Delays, and the Fraudulent Concealment by General Motors Corporation).

37) a brief portion of the facts and circumstances surrounding Appellant's **loss of memory** can be found in civil suit Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan; Case #2:09-CV-14827, Exhibit 7, p. 33-37 (duplicated in Exhibit #3 for convenience)

38) also the Appellant states his **loss of memory** continued for years including other people trying to convince the Appellant needed to be on medication.

a.) See original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan; Case #2:09-CV-14827, Exhibit 7, p. 48-63

b.) See North Oakland Medical Center report (See original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan; Case #2:09-CV-14827, Exhibit 8)

c.) See original complaint in *Stasko v General Motors Corporation* in U.S.

District Court – E.D. of Michigan; Case #2:09-CV-14827, Exhibit 7,

p. 64-65

39) further the Appellant states his **memory only starts to clear up in July 2005**. In order for the U. S. District Court – S. D. of New York to understand how much the Appellant's memory will clear up civil suit Exhibit 15 in *Stasko v General Motors Corporation* in U.S. District Court – E. D. of Michigan represents the Appellant's resume for General Motors accomplishments in CY2005, and Exhibit 16 represents the Appellant's resume for General Motors accomplishments written approximately October CY2009.

40) since civil suit *Stasko v General Motors Corporation* was filed in U.S. District Court – E.D. of Michigan the Appellant researched why the Tolling of Limitations for Mental Disability applied to his civil suit

41) first the Appellant explained that M.C.L.A. 600.5851 (3) states "to be considered a disability, the infancy or insanity must exist at the time the claim accrues. If the disability comes into existence after the claim has accrued, a court shall not recognize the disability under this section for the purpose of modifying the period of limitations."

42) also the Appellant explained that M.C.L.A. 600.5851 (5) states "... a court shall count the year of grace provided in this section from the termination of the last disability to the person to whom the claim originally accrued that has continued from the time the claim accrued, whether this disability terminates because of the death of the person disabled or for some other reason."

43) if the Appellee argues that the Appellant resigned from General Motors Corporation on August 25, 1995; therefore, the Appellant's mental disability (loss of



memory) is over fourteen years old. The court should note that Calladine v Dana Corp. 679 F.Supp. 700, E.D. Mich., February 29, 1988 (No. Civ. A. 87-CV-1739DT) states “...that an individual mentally incompetent at the time a cause of action accrues may file the claim before the applicable limitations period runs *after* the disability is removed. Since William remains mentally incompetent, the statute has not begun to run even though the injury occurred almost nine years prior to the filing of this suit” (See Calladine v Dana Corp.)

44) also Paavola v. St. Joseph Hosp. Corp., 119 Mich.App. 10, 14-15, 325 N.W.2d 609 (1982) states that the “...statute permits tolling for a “period potentially many decades long.”

45) further if the Appellee argues that the Appellant should have appointed a guardian or obtained an attorney to capably handle the Appellant’s rights when the Appellant first began to discover the injury or loss approximately September 2005 similar to the argument made in Calladine v Dana Corp. ( “... In other words, asserts Dana, William has been in a far better position legally than the average individual who must attend to his or her legal rights without such assistance.”;) The Appellant states that he is a single man with no spouse. The Appellant has no legal children. The Appellant did try to obtain an attorney when he first began to discover the injury or loss approximately September 2005 but the attorney showed no interest in the case, nor did the attorney return the Appellant’s phone calls, once the attorney learned that the Appellant resigned from General Motors Corporation ten years ago in August 1995

46) still further Calladine v Dana Corp. states that “...Michigan courts have consistently held otherwise. In a string of decisions, the Michigan Court of Appeals has found that the statute does not begin to run even with the appointment of a guardian,

(emphasis added) *see, e.g., Wallisch v. Fosnaugh*, 126 Mich.App. 418, 426, 336 N.W.2d 923 leave to appeal denied, 418 Mich. 871 (1983); *Paavola*, 119 Mich.App. at 14, 325 N.W.2d 609, or next friend, *Rittenhouse v. Erhart*, 126 Mich.App. 674, 679, 337 N.W.2d 626 (1983), modified on other grounds, 424 Mich. 166, 380 N.W.2d 440 (1986), on behalf of a mentally incompetent person.

47) still further if the Appellee argues that the Appellant did not have a mental disability because he was able to work for DSP Technology in Ann Arbor, Michigan and MSX International in Auburn Hills, Michigan covering a period a time from approximately January 1997 to February 2001. The court should note that *Asher v. Exxon Co., U.S.A.*, 504 N.W.2d 728 Mich.App.,1993 states "... the circuit court erred in finding that plaintiff was not mentally deranged because he was able to work, see *Davidson v. Baker-Vander Veen Construction Co.*, 35 Mich.App. 293, 302-303, 192 N.W.2d 312 (1971)."

48) therefore since *M.C.L.A. 600.5851 (5)* states "shall count the year of grace from the termination of the last disability" and since the plaintiff's loss of memory will clear up enough for the plaintiff to represent himself in court approximately October CY2009 the statue of limitations does not expire until October 2010. (October 2009 plus one year equals October 2010.)

#### **GENESIS OF CIVIL ACTION: PRE-CIVIL SUIT MEETING**

49) the U.S. District Court — S.D. of New York may ask the question - after an attorney showed no interest in the case when the Appellant first began to discover the injury or loss approximately September 2005 did the Appellant seek future legal counsel prior to filing civil suit *Stasko v General Motors Corporation* in U.S. District Court – E. D. of Michigan on December 11, 2009?

50) when the Appellant's could better describe his accomplishments at General Motors Corporation the Appellant again tried to receive legal counsel approximately October 2009 (See Exhibit 4).

51) attorney Paul R. Jones was skeptical but eventually he did arrange a meeting in October 2009

52) attorney Paul R. Jones, David Chesnick, and the Appellant meet at 18551 W. Warren Avenue, Detroit, Michigan in October 2009

53) going into the meeting the Appellant was under the impression attorney David Chesnick specialized in labor law and might represent the Appellant in civil suit Stasko v General Motors Corporation

54) during the meeting attorney David Chesnick acted more like an attorney for General Motors Corporation than an attorney for the Appellant

55) therefore, the Appellant began the process of preparing a civil suit against General Motors Corporation as a **Pro Se Litigant** in October 2009

#### **DISCOVERY DELAYS**

56) since civil suit Stasko v General Motors Corporation was filed in U.S. District Court – E. D. of Michigan the Appellant (as a **Pro Se Litigant**) researched Tolling of Limitations for Discovery Delays applicable Title 42 U.S.C. Section 1983

57) the Appellant learned that according to Campau v Orchard Hills Psychiatric Center 946 F.Supp. 507, 19A.D.D. 1056, E.D. Mich., November 19, 1996 (No. Civ. A.96-40310) the discovery rule postpones beginnings of limitations period from date when plaintiff is wronged to date when he discovers he has been injured

58) also other State of Michigan court rulings include Stephens v. Dixon, 536 N.W.2d 755 Mich., 1995 “in deciding whether to strictly enforce period of limitation or impose

discovery rule, court must carefully balance when plaintiff learned of her injuries, whether she was given fair opportunity to bring her suit, and whether defendant's equitable interests would be unfairly prejudiced by tolling statute of limitations.

M.C.L.A. § 600.5827.”

59) further, according to Moll v. Abbott Laboratories, 506 N.W.2d 816 Mich.,1993

“...once plaintiff is aware of injury and its possible cause, plaintiff is aware of possible cause of action for purposes of commencement of statute of limitations.”

60) still further, City of Huntington Woods v. Wines, 332 N.W.2d 557

Mich.App.,1983 “... limitation period commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper or was done in an improper manner.”

61) still further, Jackson County Hog Producers v. Consumers Power Co., 592

N.W.2d 112 Mich.App.,1999 “... if the discovery rule applies, a claim does not accrue for the purpose of the running of the limitation period until a plaintiff discovers, or through the exercise of reasonable diligence should have discovered (1) an injury and (2) the causal connection between the injury and a defendant's breach of duty.”

62) still further, Rose v Saginaw County, 232 F.R.D. 267, E.D. Mich., November 21,

2005 (No. 01-10337-BC). “... if the plaintiff has delayed beyond the limitations period, he must fully plead the facts and circumstances surrounding his belated discovery and the delay”

63) since the Appellant fully plead the facts and circumstances surrounding his belated discovery and the delay in the original complaint in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan; therefore, the Appellant submitted

the (70) plus page Exhibit #7 from Case #2:09-CV-14827 to the U.S. Bankruptcy Court – S. D. of New York

64) further the U. S. District Court – S. D. of New York needs to understand when the Appellant motioned the U.S. Bankruptcy Court – S.D. of New York for Relief from the Automatic Stay the majority of the (500) plus pages of the original complaint in *Stasko v General Motors Corporation* in U.S. District Court – E.D. of Michigan was written and / or compiled by the Appellant after the meeting with attorneys Paul R. Jones and David Chesnick in October 2009 but before filing the civil suit complaint on December 11, 2009.

#### **FRAUDULENT CONCEALMENT**

65) since civil suit *Stasko v General Motors Corporation* was filed in U.S. District Court – E. D. of Michigan the Appellant (as a **Pro Se** Litigant) researched Tolling of Limitations for Fraudulent Concealment as the Appellant uncovered the depth of General Motors Corporation Fraudulently Concealing the Appellant's accomplishments

66) M.C.L.A. 600.5855 "... if a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitation."

67) also *McCray v Moore* (Not reported in F.Supp. 2d, 2008 WL 4225762), U.S. District Court, E.D. Mich., No. 07-13297, September 9, 2008 states "... Michigan law

provides that the statute of limitations may be tolled where a defendant has concealed the facts giving rise to the cause of action.”

68) further McCray v Moore states “... Mich. Comp. Laws § 600.5855. The acts constituting fraudulent concealment are “(1) wrongful concealment of their actions by the defendants; (2) failure of the plaintiff to discover the operative facts that are the basis of his cause of action within the limitations period; and (3) plaintiff’s due diligence until discovery of the facts.” Evans v. Pearson Enterprises, Inc., 434 F.3d 839, 851 (6th Cir.2006), quoting, Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir.1975).”

69) still further Lumber Village v Siegler, 355 N.W.2d 654 states “... as a general rule, for fraudulent concealment to postpone the running of the period of limitation, the fraud must be manifested by an affirmative act or misrepresentation. Draws v. Levin, 332 Mich. 447, 452, 52 N.W.2d 180 (1952)”

70) affirmative acts by General Motors Corporation can be seen when Appellant for **the first time** (emphasis added) requested a complete copy of all employment records pertaining to his work for General Motors Corporation on July 20, 2005. (See Original Civil Suit Complaint Exhibit 10, 11, and 12 of Stasko v General Motors Corporation; duplicated in Exhibit #2 for convenience)

71) General Motors Corporation did not respond to the letter dated July 20, 2005.

72) the Appellant made a second request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 8, 2005. (See Exhibit #2)

73) General Motors Corporation did not respond to the second request letter dated August 8, 2005.



74) the Appellant made a third request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 24, 2005. (See Exhibit #2)

75) the U.S. District Court – S.D. of New York should note that in the third request the Appellant states “Stanley R. Stasko requests this information to: ...look for possible discrimination by General Motors against Stanley R. Stasko (it is Stanley R. Stasko opinion that he can compile a reasonable argument that he should have been one or more levels higher than he was at the time of his departure).” (See Exhibit #2)

76) also note that Stanley R. Stasko informed General Motors Legal Staff in CY2005 of a possible lawsuit by sending a copy of this letter to: Dan Galnat, Attorney, General Motors – Global Headquarters...” (See Exhibit #2)

77) further note that **“now that the plaintiff (Stanley R. Stasko) has implied a possible lawsuit,** (emphasis added) the defendant (General Motors Corporation) responded by mailing a package of information to the Appellant FedEx Trk # 8464-9619-6310.”

78) additional affirmative acts by General Motors Corporation can be seen when one considers that the Appellant was hired by General Motors on July 18, 1983 and resigned on August 25, 1995; therefore, it is reasonable to expect performance evaluation forms for CY1983, CY1984, CY1985, CY1986, CY1987, CY1988, CY1989, CY1990, CY1991, CY1992, CY1993, CY1994, and CY1995

79) the information from General Motors Corporation (FedEx Trk # 8464-9619-6310) contained only three Advanced Engineering Staff Performance planning and Development Process information forms. (See original complaint Exhibit 13 in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan)

a. One Advanced Engineering Staff Performance Planning Development

Process information dated December 22, 1989, by Stanley R. Stasko

b. One Advanced Engineering Staff Performance Planning Development

Process information dated December 19, 1990, by Stanley R. Stasko

c. One Advanced Engineering Staff Performance Planning Development

Process information dated January 22, 1992 by Stanley R. Stasko

80) also in order for the U. S. District Court – S. D. of New York to understand how much General Motors Corporation tried to Fraudulently Conceal the Appellant's accomplishments Exhibit 16 of civil suit Stasko v General Motors Corporation in U.S. District Court – E. D. of Michigan represents the Appellant's resume written approximately October CY2009.

81) further the U. S. District Court – S. D. of New York needs to understand the Appellant submitted on CD to the U.S. Bankruptcy Court – S.D. of New York the approximate (89) page resume of Exhibit 16 in Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan when the Appellant motioned for Relief from the Automatic Stay

82) still further the U.S. District Court – S.D. of New York needs to understand that the majority of the Fraudulent Concealment research by the Appellant in the civil suit complaint was written and / or compiled by the Appellant after the meeting with attorneys Paul R. Jones and David Chesnick in October 2009 but before filing the civil suit complaint on December 11, 2009.



**PRO SE LITIGANT – LESS STRINGENT STANDARD**

83) the statement by General Motors Corporation legal counsel “this motion is based on a post-petition action that was filed in the District Court for the Eastern District of Michigan on December 11, 2009, significantly after the filing of our bankruptcy petition on June 1<sup>st</sup>, 2009.” (See Docket #5509) seems insignificant when considering the

Appellant is a Pro Se Litigant

84) Title 28 U.S.C.A. Section 1654 states “implicit in right to self-representation is obligation on part of court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training.”

85) also the U.S. Court of Appeals – Second Circuit made a similar statement in Triestman v. Federal Bureau of Prisons, 470 F.3d 471 by stating “this policy of liberally construing pro se submissions is driven by the understanding that implicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training.” Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir.1983); see also Ruotolo v. I.R.S., 28 F.3d 6, 8 (2d Cir.1994) (recognizing that pro se litigants must be accorded “special solicitude”). See generally Jonathan D. Rosenbloom, Exploring Methods to Improve Management and Fairness in Pro Se Cases: A Study of the Pro Se Docket in the Southern District of New York, 30 FORDHAM URB. L.J. 305, 380 (2002)

86) further the U.S. Court of Appeals – Second Circuit also stated in Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir.1983) that “while the right does not exempt a party from compliance with relevant rules of procedural and substantive law, Birl v. Estelle, 660 F.2d 592, 593 (5th Cir.1981), it should not be impaired by harsh application of technical rules”

**SOME EVIDENCE FOR MODIFICATION OF FINAL INJUNCTION AFTER AN  
EXTENDED PERIOD OF TIME**

87) since there is some evidence that the U.S. Court of Appeals – Second Circuit is open to modifications of final injunctions after an extended period of time. Grand Union Equipment Co. v. Lippner, 167 F.2d 958 states “the expiration of an extended period of time will not prevent a reopening for justifiable reasons”

88) therefore the Appellant filing civil suit against General Motors Corporation in Stasko v General Motors Corporation on December 11, 2009, approximately eleven days after the Bankruptcy Court established November 30, 2009, as (the “Bar Date Order”) is not significant

**SONNAX FACTORS: BURDEN OF PROOF**

89) in Debtor’s Opposition to Stasko’s Automatic Stay Motion (Docket # 5390) Section II is entitled “**Movant Cannot Meet His Burden of Establishing Cause to Modify the Automatic Stay**”, (emphasis added) General Motors Corporation in Paragraphs 15, 16, 17, 18, 19, and 20 makes various arguments why Appellant should be denied relief from the Automatic Stay

90) first, the Bankruptcy Judge should have known that U.S. Bankruptcy Code 11 U.S.C.A. Section 362 (g) (1) and (g) (2) states “in any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.”

91) also the Bankruptcy Judge should have known that U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) recognized that the U.S. Bankruptcy Code “places burden of proof on Debtor for all issues other than debtor’s equity in property”

92) further the U.S. Bankruptcy Court – S. D. of New York in ENRON Corp. stated “on motion to modify automatic stay, movant bears initial burden of showing that “cause” exists to modify stay, and only if movant makes initial showing of “cause” does burden then shift to party opposing relief from stay”.

93) Sonmax Factors (2), (9), and (11) are worth mentioning:

**SONNAX FACTOR (2)**

94) the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) states in Sonmax Factor (2) “lack of any connection with or interference with the bankruptcy case”

95) the phrase “lack of any connection with ... the bankruptcy case” is consistent with United States Code: **proceedings that are outside scope of statute which gives federal district court bankruptcy jurisdiction over all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 cannot be referred to bankruptcy court by federal district court. (emphasis added) 28 U.S.C.A. § 157**

96) since civil suit Stasko v General Motors Corporation is based on Title 42 USC Section 1983 and is not a right created by federal bankruptcy law; therefore, the proper venue for civil suit Stasko v General Motors Corporation is the U.S. District Court – E. D. of Michigan; therefore, the Order by the Bankruptcy Judge Denying Motion of Stanley R. Stasko for Relief from the Automatic Stay should be reversed by Sonmax Factor (2).

**SONNAX FACTOR (11)**

97) the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) in Sonnax Factor (11) used the phrase “whether the parties are ready for trial in the other proceeding”

98) this is consistent with United States Code: **if inquiry is whether federal district court's bankruptcy jurisdiction over a civil proceeding arises under, arises in, or is related to cases under Title 11, it is irrelevant whether particular proceeding is “core” or “noncore”; district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11. 28 U.S.C.A. § 1334(a, b).**

99) since civil suit Stasko v General Motors Corporation is based on Title 42 USC Section 1983 and is not created by federal bankruptcy law it is a non-core bankruptcy court proceeding; therefore, district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11

100) further, the Order by the Bankruptcy Judge should be reversed and Stanley R. Stasko’s Motion for Relief from the Automatic Stay should be granted by Sonnax Factor (11).

**SONNAX FACTOR (9)**

101) the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) states in Sonnax Factor (9) “whether movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor”

102) the phrase “whether movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor” is consistent with United States Code: if

**proceeding does not invoke substantive right created by federal bankruptcy law and is one that could exist outside of bankruptcy, it is noncore proceeding, though it may be related to bankruptcy because of its potential effect on debtor's estate (emphasis added) 28 U.S.C.A. § 157.**

103) since civil suit Stasko v General Motors Corporation is based on Title 42 USC Section 1983 and is not a right created by federal bankruptcy law the civil suit is a non-core bankruptcy court proceeding

104) also General Motors Corporation (the Debtor) could possibly incur a judicial lien of approximately \$2.7 million dollars for the estimated loss by the Appellant

and possible judicial liens of an unspecified amount for unique solutions accomplished by the Appellant while working for General Motors Corporation

and possible judicial liens of an unspecified amount in punitive damages for hostile work environment by General Motors Corporation against Stanley R. Stasko

105) therefore, the Order by the Bankruptcy Judge should be reversed and Appellant's Motion for Relief from the Automatic Stay should be granted by Sonnax Factor (9).

#### **BIAS, HARASSMENT, AND HORSEPLAY**

106) there is evidence from the Bankruptcy Court proceedings and in the Appeal process of bias against the Appellant (non-legal term), harassment of the Appellant (non-legal term), and horseplay against the Appellant (non-legal term)

107) Judge Robert E Gerber of the U.S. Bankruptcy Court – S. D. of New York should have known that U.S. Bankruptcy Code places the burden of proof on the debtor and he should have known the Appellant had cause for relief from the Automatic Stay by Second Circuit Sonnax Factors (2), (9), and (11)

108) Judge Gerber should have known that district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11; therefore, Judge Gerber should have also known that he did not have jurisdiction whereby he can Order Mr. Stasko to “withdraw the Michigan Case” (Docket #5532)

109) Judge Gerber should have known that civil suit Stasko v General Motors Corporation is a non-core bankruptcy proceeding; therefore, Judge Gerber should have also known that he did not have jurisdiction whereby he can Order Mr. Stasko to “withdraw the Michigan Case” (Docket #5532)

110) on page 40, lines 2 – 8, and 18 - 24 of the U.S. Bankruptcy Court – S.D. of New York Transcript of April 8, 2010, the Bankruptcy Judge Gerber purposefully publicly harasses the Appellant by stating “uniquely in my ten years as a judge, as a bankruptcy judge, and forty years as a lawyer, this is the first time that I’ve had a fellow or an entity who actually filed litigation after the bankruptcy case was filed and then asked for relief from the stay to continue in the filing of – or prosecution of a litigation that should never have been filed in the first place ... now, I’ll assume for the sake of discussion that you didn’t know about the bankruptcy when you filed the action in the Eastern District of Michigan, but once you heard about it, proceeding to try to get a default against the debtor was just dead wrong. And because you’re not a lawyer, I’m not going to use one of the stronger words that I would use, but that’s real bad, okay?” (See Docket #5509)

111) further the legal counsel for General Motors Corporation **purposefully** makes a disingenuous statement on page 35, lines 19, 20, 21, and 22 of the U.S. Bankruptcy Court – S.D. of New York Transcript of April 8, 2010, when he states “this motion is based on a post-petition action that was filed in the District Court for the Eastern District of



Michigan on December 11, 2009, significantly after the filing of our bankruptcy petition on June 1<sup>st</sup>, 2009.” (See Docket #5509) when General Motors Corporation knows the civil lawsuit has its genesis in CY2005

112) still further the legal counsel for General Motors Corporation publicly tries to harass the Appellant by stating on page 37, lines 3-6 of the U.S. Bankruptcy Court – S.D. of New York Transcript of April 8, 2010, “and in terms of the race-baiting, my conclusion is that the – based on his – the history of his earlier life, which I won’t get into here, but it seems like that’s the basis for his allegations against General Motors.” (See Docket #5509)

113) still further the Appellant’s copy of the Order by U.S. District Court – S. D. of New York to serve and file a brief regarding the appeal was “never mailed”, “taken” or “not delivered”. (See Order signed August 22, 2010 – Document 4)

### CONCLUSION

114) the Appellant above has stated fourteen reasons:

- a. *Burden of Proof on Debtor*
- b. *Shall Grant Relief from Stay for Cause*
- c. *District Court Higher than Bankruptcy Court*
- d. *Civil Suit is a Non-Core Bankruptcy Proceeding*
- e. *Civil Suit has its Genesis in CY2005*
- f. *Mental Disability*
- g. *Genesis of Civil Action: Pre-Civil Suit Meeting*
- h. *Discovery Delays*
- i. *Fraudulent Concealment by General Motors*
- j. *Pro Se Litigant – Less Stringent Standard*

k. Some Evidence for Modification of Final Injunction after an Extended  
Period of Time

l. Sonnax Factor (2)

m. Sonnax Factor (11)

n. Sonnax Factor (9)

115) therefore the Bankruptcy Judge Order to withdraw civil suit Stasko v General  
Motors Corporation from the U.S. District Court – E. D. of Michigan should be voided.

116) further the Appellant asks the U.S. District Court – S. D. of New York to reverse  
the Order by the Bankruptcy Judge Denying Motion of Stanley R. Stasko for Relief from  
the Automatic Stay

117) and grant the Appellant's Motion for Relief from the Automatic Stay.

Dated: November 21, 2010


  
\_\_\_\_\_  
Stanley R. Stasko  
27653 Lexington Pkwy Southfield, Michigan 48076  
Telephone # 313-670-6917  
Pro Se Litigant



Exhibit - 5

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**STANLEY R. STASKO**

**27653 Lexington Pkwy Southfield, Michigan 48076**

**#313-670-6917**

**Appellant**

**Creditor – U.S. Bankruptcy Court – S.D. of N.Y.; Case # 09-50026 (REG)**

**Plaintiff – U.S. District Court – E.D. of Mich.; Case # 2:09-CV-14827**

**Pro Se Litigant**

**V**

**Case No. 1:10-CV-04322-JGK**

**Honorable John G. Koeltl**

**MOTORS LIQUIDATION COMPANY**

**(f/k/a GENERAL MOTORS CORPORATION)**

**Weil, Gotshal & Manges LLP**

**767 Fifth Avenue New York, New York 10153-0119**

**#212-310-8000**

**Appellee / Attorney for Debtors and Debtors in Possession**

**Debtor – U.S. Bankruptcy Court – S.D. of N.Y.; Case # 09-50026 (REG)**

**Defendant – U.S. District Court – E.D. of Mich.; Case # 2:09-CV-14827**

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**RESPONSE TO GENERAL MOTOR'S LEGAL BRIEF**

Stanley R. Stasko (Appellant) respectfully states:

**BURDEN OF PROOF**

1) in the Appellee's Legal Brief the Appellee states "... in denying the Motion, the Bankruptcy Court concluded that Appellant could not and did not satisfy his considerable burden of establishing cause sufficient to truncate the statutorily imposed breathing spell to which the Debtors are entitled." (Appeals Court Document 11, Page 5 of 29)

2) this is in reference to Judge Gerber of the U.S. Bankruptcy Court – S. D. of New York (the Bankruptcy Judge) statement "Mr. Stasko, I'm going to have to deny your motion for relief from the stay, both by reason of your failure to show that you're entitled to that relief under the Second Circuit Sonnax factors" (Bankruptcy Court Transcript of April 8, 2010; Page 31, Lines 18 - 21; Docket # 5509)

3) Judge Gerber failed to realize that the United States Bankruptcy Code places the burden of proof on the Debtor and the United States Bankruptcy Code 11 U.S.C.A. Section 362 (g) (1) and (g) (2) states "in any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues."

4) also Judge Gerber failed to realize that the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) also recognized that the United States Bankruptcy Code "places burden of proof on the debtor for all issues other than debtor's equity in property"

5) further the Bankruptcy Judge failed to realize that the U.S. Bankruptcy Court – S. D. of New York in Re ENRON Corp. 306 B.R. 465 stated “on a motion to modify the automatic stay is a shifting one. Sonnax, 907 F.2d at 1285. The initial burden rests on the movant to show cause to modify the stay. Bogdanovich, 292 F.3d at 110; Mazzeo, 167 F.3d at 142; Sonnax, 907 F.2d at 1285. Only if the movant makes an initial showing of cause does the burden then shift to the party opposing the relief. Mazzeo, 167 F.3d at 142.”

**SHALL GRANT RELIEF FROM STAY FOR CAUSE**

6) the term for “cause” can be found in the U.S. Bankruptcy Code 11 U.S.C.A. Section 362 (d)(1) which states “on request of a party in interest and after notice and a hearing, the court **shall grant relief** (emphasis added) from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest”

7) the Bankruptcy Judge failed to realize that the U.S. Bankruptcy Court – S. D. of New York in Re ENRON Corp. 306 B.R. 465 stated “once a legally sufficient basis, or cause, is demonstrated by the movant, the party opposing the relief **must prove that it is entitled** (emphasis added) to the continuing protections of the automatic stay. In re M.J. & K. Co., Inc., 161 B.R. 586, 590 (Bankr.S.D.N.Y.1993)”

8) also the Bankruptcy Judge failed to realize that the U.S. Court of Appeals – Sixth Circuit in In re Newpower, 233 F.3d 922 stated “the automatic stay imposed by the filing of a bankruptcy petition **shall be lifted** (emphasis added) upon motion by a party in interest in cases where (1) the party can show cause ...”

- 9) further the Appellant has shown cause in:
  - a. Sonnax Factor (2),
  - b. Sonnax Factor (9),
  - c. and Sonnax Factor (11)
- 10) still further the Appellant has shown additional cause in non-Sonnax Factors:
  - a. including civil suit Stasko v General Motors Corporation having its Genesis in CY2005,
  - b. the Appellant's Mental Disability prior to CY2009,
  - c. the Fraudulent Concealment by General Motors Corporation of Stanley R. Stasko's work accomplishments,
  - d. and General Motors Corporation Hostile Work Environment against Stanley R. Stasko

**WITHDRAW THE MICHIGAN CASE**

- 11) in the Appellee's Legal Brief the Appellee states "... the Bankruptcy Court properly exercised its discretion and denied the Motion and ordered Appellant to withdraw the Michigan Action for violating the automatic stay." (Appeals Court Document 11, Page 5 of 29)
- 12) this is in reference to Judge Gerber's Order for Mr. Stasko to "withdraw the Michigan Case" (Docket #5532) (the Michigan Case being civil suit Stasko v General Motors Corporation in U.S. District Court – E. D. of Michigan; Case #2:09-CV-14827.)
- 13) Judge Gerber should have known that district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11; therefore, Judge Gerber should have also known that he did not have jurisdiction whereby he can Order Mr. Stasko to "withdraw the Michigan Case"

14) the Appellant pointed out this error by Judge Gerber by directing the U.S. District Court – S. D. of New York to U.S. District Court – E.D. of Louisiana in Eubanks v Esenjay Petroleum Corp. (152 B.R. 459) which states that **“if inquiry is whether federal district court's bankruptcy jurisdiction over a civil proceeding arises under, arises in, or is related to cases under Title 11, it is irrelevant whether particular proceeding is “core” or “noncore”; district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11. 28 U.S.C.A. § 1334(a, b).”** (Appeals Court Document 9, Page 5 and 6 of 25)

15) also Eubanks v Esenjay Petroleum Corp. (152 B.R. 459) also states that **“proceedings that are outside scope of statute which gives federal district court bankruptcy jurisdiction over all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 cannot be referred to bankruptcy court by federal district court. 28 U.S.C.A. § 157.”** (Appeals Court Document 9, Page 6 of 25)

16) further the U.S. District Court – E. D. of Louisiana based its interpretation of Section 157 on the legislative progeny of the **United States Supreme Court's** decision in Northern Pipeline v. Marathon, 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (Appeals Court Document 9, Page 6 of 25)

17) still further civil suit Stasko v General Motors Corporation is based on Title 42 U.S.C. Section 1983 Judge Gerber should have also known that he did not have jurisdiction whereby he can Order Mr. Stasko to “withdraw the Michigan Case”

### **CORE and NON-CORE PROCEEDINGS**

18) Judge Gerber should have known that civil suit Stasko v General Motors Corporation is a non-core bankruptcy proceeding; therefore, Judge Gerber should have

also known that he did not have jurisdiction whereby he can Order Mr. Stasko to  
“withdraw the Michigan Case” (Docket #5532)

19) the Appellant pointed out this error by Judge Gerber by directing the U.S. District Court – S. D. of New York to U.S. Court of Appeals – Fifth Circuit in the Matter of James P. Wood M.D. (825 F.2d 90, 91; 5<sup>th</sup> Cir. 1987) states “if proceeding involves right created by federal bankruptcy law, or is one which **would only arise in bankruptcy**, (emphasis added) it is core proceeding, **but if proceeding does not invoke substantive right created by federal bankruptcy law and is one that could exist outside of bankruptcy, it is noncore proceeding, though it may be related to bankruptcy because of its potential effect on debtor's estate. 28 U.S.C.A. § 157.** (Appeals Court Document 9, Page 7 of 25)

20) still further Stanley R. Stasko specifically asked the Honorable Judge Julian Abele Cook, Jr. of the U.S. District Court – E. D. of Michigan at the Status Conference on April 12, 2010, “how a judge in one court can order a withdrawal in a totally different district.” Judge Cook replied by stating “Well, I don’t understand it either, and that’s why I did not make a ruling on that. I had serious doubts in my mind in the absence of any showing of case authority or statutory authority that a judge can order a person to withdraw the allegation. The judge, I believe, has the right to enforce – or not enforce the statute, but I don’t know that there’s any law – and there may be. Maybe it exists, but I’m not aware of any law that permits such a person, such a judge, to order a litigant to withdraw the allegations.” (See Exhibit 1, Page 11, Lines 9 – 20)



**DEBTOR'S TIME, FINANCIAL RESOURCES, AND ATTENTION NECESSARY  
TO DEFEND THEMSELVES**

21) in the Appellee's Legal Brief the Appellee states "... the burden imposed on the Debtors in terms of the time, financial resources, and attention necessary to defend against the Michigan Action far outweighs any potential gain to Appellant in proceeding with the Michigan Action against the Debtors given that Appellant did not file a timely proof of claim against the Debtors and is therefore barred from seeking any recovery from the Debtors." (Appeals Court Document 11, Page 6 of 29)

**FRAUDULENT CONCEALMENT**

22) the first part of this statement is the time, financial resources, and attention necessary to defend against the Michigan Action.

23) when civil suit *Stasko v General Motors Corporation* was filed in U.S. District Court – E. D. of Michigan the Appellant (as a **Pro Se** Litigant) researched Tolling of Limitations for Fraudulent Concealment as the Appellant uncovered the depth of General Motors Corporation Fraudulently Concealing the Appellant's accomplishments

24) M.C.L.A. 600.5855 "... if a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitation."

25) affirmative acts by General Motors Corporation Fraudulently Concealing the Appellant's accomplishments can be seen when Appellant **for the first time** (emphasis

added) requested a complete copy of all employment records pertaining to his work for General Motors Corporation on July 20, 2005. (Appeals Court Document 9-1, Page 6 of 24)

26) General Motors Corporation did not respond to the letter dated July 20, 2005.

27) the Appellant made a second request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 8, 2005. (Appeals Court Document 9-1, Page 8 of 24)

28) General Motors Corporation did not respond to the second request letter dated August 8, 2005.

29) the Appellant made a third request for a complete copy of all employment records pertaining to his work for General Motors Corporation on August 24, 2005. (Appeals Court Document 9-1, Page 10 and 11 of 24)

30) the U.S. District Court – S.D. of New York should note that in the third request the Appellant states “Stanley R. Stasko requests this information to: ...look for possible discrimination by General Motors against Stanley R. Stasko (it is Stanley R. Stasko opinion that he can compile a reasonable argument that he should have been one or more levels higher than he was at the time of his departure).” (Appeals Court Document 9-1, Page 10 and 11 of 24)

31) also note that Stanley R. Stasko informed General Motors Legal Staff in CY2005 of a possible lawsuit by sending a copy of this letter to: Dan Galnat, Attorney, General Motors – Global Headquarters...” (Appeals Court Document 9-1, Page 10 and 11 of 24)

32) further note that “**now that the plaintiff (Stanley R. Stasko) has implied a possible lawsuit,** (emphasis added) the defendant (General Motors Corporation)

responded by mailing a package of information to the Appellant FedEx Trk # 8464-9619-6310.”

33) additional affirmative acts by General Motors Corporation can be seen when one considers that the Appellant was hired by General Motors on July 18, 1983 and resigned on August 25, 1995; therefore, it is reasonable to expect performance evaluation forms for CY1983, CY1984, CY1985, CY1986, CY1987, CY1988, CY1989, CY1990, CY1991, CY1992, CY1993, CY1994, and CY1995

34) the information from General Motors Corporation (FedEx Trk # 8464-9619-6310) contained only three Advanced Engineering Staff Performance planning and Development Process information forms.

35) also in order for the U. S. District Court – S. D. of New York to understand how much General Motors Corporation tried to Fraudulently Conceal the Appellant’s accomplishments Exhibit 16 of civil suit Stasko v General Motors Corporation in U.S. District Court – E. D. of Michigan represents the Appellant’s resume written approximately October CY2009. (Appeals Court Document 9, Page 19 of 25)

36) therefore the time, financial resources, and attention necessary to defend against the Michigan Action was self inflicted by General Motors Corporation when General Motors Corporation Fraudulently Concealed Stanley R. Stasko’s accomplishments

**PRO SE LITIGANT – LESS STRINGENT STANDARD**

37) the second part of the Appellee statement “... given that Appellant did not file a timely proof of claim against the Debtors and is therefore barred from seeking any recovery from the Debtors.”(Appeals Court Document 11, Page 6 of 29)

38) the Appellant filed a Proof of Claim with the U.S. Bankruptcy Court – S. D. of New York via U.S. Mail on April 28, 2010. (Appeals Court Document 9-1, Page 4 of 24)

39) also civil suit Stasko v General Motors Corporation in U.S. District Court – E.D. of Michigan has its genesis in CY2005 when the Appellant first requested a complete copy of all employment records pertaining to his work for General Motors Corporation on July 20, 2005

40) further Stanley R. Stasko is a Pro Se Litigant and Title 28 U.S.C.A. Section 1654 states “implicit in right to self-representation is obligation on part of court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training.”

41) still further the U.S. Court of Appeals – Second Circuit made a similar statement in Triestman v. Federal Bureau of Prisons, 470 F.3d 471 by stating “this policy of liberally construing pro se submissions is driven by the understanding that implicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training.” Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir.1983); see also Ruotolo v. I.R.S., 28 F.3d 6, 8 (2d Cir.1994) (recognizing that pro se litigants must be accorded “special solicitude”). See generally Jonathan D. Rosenbloom, Exploring Methods to Improve Management and Fairness in Pro Se Cases: A Study of the Pro Se Docket in the Southern District of New York, 30 FORDHAM URB. L.J. 305, 380 (2002)

42) still further the U.S. Court of Appeals – Second Circuit also stated in Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir.1983) that “while the right does not exempt a party from compliance with relevant rules of procedural and substantive law, Birl v. Estelle, 660 F.2d 592, 593 (5th Cir.1981), it should not be impaired by harsh application of technical rules”

43) still further since there is some evidence that the U.S. Court of Appeals – Second Circuit is open to modifications of final injunctions after an extended period of time.

Grand Union Equipment Co. v. Lippner, 167 F.2d 958 states “the expiration of an extended period of time will not prevent a reopening for justifiable reasons”

44) therefore the Appellant filing a Proof of Claim with the U.S. Bankruptcy Court – S. D. of New York via U.S. Mail on April 28, 2010, seems insignificant when considering the Appellant is a Pro Se Litigant

45) also civil suit Stasko v General Motors Corporation being filed in the District Court for the Eastern District of Michigan on December 11, 2009, also seems insignificant when considering the Appellant is a Pro Se Litigant

#### **SONNAX FACTOR (2)**

46) the Appellee’s Legal Brief does not discuss Sonnax Factor (2) probably because the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) states in Sonnax Factor (2) “lack of any connection with or interference with the bankruptcy case”

47) the U.S. Court of Appeals – Second Circuit is being consistent with United States Code: **proceedings that are outside scope of statute which gives federal district court bankruptcy jurisdiction over all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 cannot be referred to bankruptcy court by federal district court. (emphasis added) 28 U.S.C.A. § 157**

48) since civil suit Stasko v General Motors Corporation is based on Title 42 USC Section 1983 and is not a right created by federal bankruptcy law; therefore, the proper venue for civil suit Stasko v General Motors Corporation is the U.S. District Court – E. D. of Michigan

**SONNAX FACTOR (11)**

49) in the Appellee's Legal Brief the Appellee states "On January 29, 2010, it being evident that Appellant would not withdraw the action voluntarily, the Debtors filed a Suggestion of Bankruptcy in the Michigan Action." (Appeals Court Document 11, Page 9 of 29)

50) also in the Appellee's Legal Brief the Appellee states "Because the Michigan Action is in its nascent stages, litigating the case would require the Debtors to engage in factual investigation, motion practice, and potentially formal discovery and trial. This process could take years and would require significant attention and resources from the Debtors." (Appeals Court Document 11, Page 16 of 29)

51) these two statements seem to be referencing the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) Sonnax Factor (11) which states "whether the parties are ready for trial in the other proceeding"

52) this statement by General Motors Corporation is misleading

53) while the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) in Sonnax Factor (11) did state "whether the parties are ready for trial in the other proceeding"

54) the U.S. Court of Appeals – Second Circuit was being consistent with United States Code: **if inquiry is whether federal district court's bankruptcy jurisdiction over a civil proceeding arises under, arises in, or is related to cases under Title 11, it is irrelevant whether particular proceeding is "core" or "noncore"; district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11. 28 U.S.C.A. § 1334(a, b).**

55) also the Appellant did file a Complaint and Summons with the U.S. District Court – E. D. of Michigan on December 11, 2009, against General Motors Corporation based on Title 42 USC Section 1983

56) since Title 42 USC Section 1983 is not created by federal bankruptcy law civil suit *Stasko v General Motors Corporation* is a non-core bankruptcy court proceeding; therefore, U.S. District Court – E. D. of Michigan has original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to civil suit *Stasko v General Motors Corporation*

57) also since General Motors Corporation did not respond in a timely manner to the Complaint and Summons (December 11, 2009 plus twenty days equals December 31, 2009) the Appellant did request a hearing in civil action *Stasko v General Motors Corporation* on January 5, 2010, and requested the court to find in favor of the plaintiff (Stanley R. Stasko). (See Exhibit #2)

58) further the U.S. District Court – E. D. of Michigan responded to Request for Hearing by stating “a review of the official record in this action reveals that Stasko has failed to seek and obtain an entry of default from the Clerk of the Court.” (See Exhibit #3)

59) since the Appellant is a Pro Se Litigant he did not know he had to file a Request for Clerk’s Entry of Default with the Clerk of the Court

60) therefore, the Appellant responded to U.S. District Court – E. D. of Michigan by filing a Request for Clerk’s Entry of Default and filing a Default Request, Affidavit, Entry, and Judgment (Sum Certain) with the U.S. District Court – E. D. of Michigan (See Exhibit #4)

61) still further the Appellee's statement is further weakened since the civil suit Stasko v General Motors Corporation has its genesis in CY2005 when Stanley R. Stasko informed General Motors Legal Staff of a possible lawsuit by sending a copy of this letter to: Dan Galnat, Attorney, General Motors – Global Headquarters..." (See Appeals Court Document 9-1, Page 10 and 11 of 24)

62) still further the Appellee's statement would be further weakened if General Motors Corporation knew about the meeting between attorneys Paul R. Jones, David Chesnick, and the Appellant at 18551 W. Warren Avenue, Detroit, Michigan in October 2009 (Appeals Court Document 9, Page 14 of 25)

63) still further the Appellee's statement seems insignificant when one considers that the Appellant filed a detail (500 plus page) Complaint and Summons with the U.S. District Court – E. D. of Michigan on December 11, 2009, and General Motors Corporation has had over one year to review the Complaint and Summons

**SONNAX FACTOR (9)**

64) the Appellee's Legal Brief does not discuss Sonnax Factor (9) probably because the U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) states in Sonnax Factor (9) "whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor"

65) the U.S. Court of Appeals – Second Circuit is being consistent with United States Code: **if proceeding does not invoke substantive right created by federal bankruptcy law and is one that could exist outside of bankruptcy, it is noncore proceeding, though it may be related to bankruptcy because of its potential effect on debtor's estate (emphasis added) 28 U.S.C.A. § 157.**



66) since civil suit Stasko v General Motors Corporation is based on Title 42 USC Section 1983 and is not a right created by federal bankruptcy law the civil suit is a non-core bankruptcy court proceeding and the Appellant's success in the other proceeding would result in a judicial lien avoidable by the debtor (1) of approximately \$2.7 million dollars for the estimated loss by the Appellant, (2) and possible judicial liens of an unspecified amount for unique solutions accomplished by the Appellant while working for General Motors Corporation, and (3) and possible judicial liens of an unspecified amount in punitive damages for hostile work environment by General Motors Corporation against Stanley R. Stasko

#### **STATUS OF CIVIL SUIT**

67) in the Appellee's Legal Brief the Appellee states "The Michigan Action remains administratively closed." (Appeals Court Document 11, Page 12 of 29)

68) this statement by General Motors Corporation is misleading

69) Stanley R. Stasko specifically asked the Honorable Judge Julian Abele Cook, Jr. of the U.S. District Court – E. D. of Michigan at the Status Conference on April 12, 2010, "how a judge in one court can order a withdrawal in a totally different district." Judge Cook replied by stating "Well, I don't understand it either, and that's why I did not make a ruling on that. I had serious doubts in my mind in the absence of any showing of case authority or statutory authority that a judge can order a person to withdraw the allegation. The judge, I believe, has the right to enforce – or not enforce the statute, but I don't know that there's any law – and there may be. Maybe it exists, but I'm not aware of any law that permits such a person, such a judge, to order a litigant to withdraw the allegations." (See Exhibit 1, Page 11, Lines 9 – 20)

70) also Judge Cook stated "... I will, for administrative purposes, dismiss the lawsuit. Let me explain what I'm saying. ... I've used the word administrative which means we're **just putting this to the side** (emphasis added) to await the conclusion in the bankruptcy proceeding involving what is now former General Motors. ... without the word administratively, by my dismissing the case, it would mean that you could not bring the case back into the court. But administratively, it simply means I want to get it off the accounting. Basically we are asked in this court to account every case that's been heard in this case. ... By doing it administratively, we are putting it to the side so we won't have to count it, we won't have to keep referring to it month and month, year after year." (See Exhibit 1, Page 7, Lines 22, 23, and 25; and Page 8, Lines 1-3, 10-15, and 17-19)

**JUDGE GERBER'S BIAS AGAINST STANLEY R. STASKO**

71) in the Appellee's Legal Brief the Appellee states "After hearing arguments from both Appellant and the Debtors, the Bankruptcy Court delivered a comprehensive oral decision denying the Motion and ordering the Appellant withdraw his lawsuit entirely and [] not allow it to merely be stayed." (Appeals Court Document 11, Page 10 of 29)

72) what the Appellee fails to mention is Judge Gerber statement "My tentative, California style, is that, Mr. Stasko, I'm going to have to deny your motion for relief from the stay, both by reason of your **failure to show that you're entitled to that relief** (emphasis added) under the Second Circuit Sonnax factors and because you didn't file a proof of claim" (Bankruptcy Court Transcript of April 8, 2010; Page 31, Lines 17 - 22; Docket # 5509)

73) the statement seems to indicate that Judge Gerber decided this motion prior to hearing oral arguments

74) Judge Gerber should have known that the United States Bankruptcy Code places the burden of proof on the Debtor, the United States Bankruptcy Code 11 U.S.C.A. Section 362 (g) (1) and (g) (2) states “in any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.”

75) also Judge Gerber should have known that U.S. Court of Appeals – Second Circuit in Sonnax Industries, Inc. v. Tri Component Products Corp., 907 F.2d 1280 (2d Cir. 1990) recognized that the U.S. Bankruptcy Code “places burden of proof on Debtor for all issues other than debtor’s equity in property”

76) further Judge Gerber should have known that the Appellant had cause for relief from the Automatic Stay by Second Circuit Sonnax Factors (2), (9), and (11)

77) still further the Appellee also fails to mention is that Judge Gerber statement “The motion is denied. And consistent with the debtors’ request under the unusual facts of this case, I am also ordering that Mr. Stasko do two things: one, to tell the district court that I denied relief from the stay, and, two, **that I have directed Mr. Stasko to withdraw his lawsuit entirely** (emphasis added) and to not allow it to merely be stayed.” (Bankruptcy Court Transcript of April 8, 2010; Page 39, Lines 12 - 18; Docket # 5509)

78) Judge Gerber should have known that district courts have original and concurrent jurisdiction over all civil proceedings that arise under, arise in, or are related to case under Title 11; therefore, Judge Gerber should have also known that he did not have jurisdiction whereby he **directed Mr. Stasko to withdraw his lawsuit entirely** (emphasis added) and to not allow it to merely be stayed.

79) also Judge Gerber should have known that civil suit *Stasko v General Motors Corporation* is a non-core bankruptcy proceeding; therefore, Judge Gerber should have also known that he did not have jurisdiction whereby he **directed Mr. Stasko to withdraw his lawsuit entirely** (emphasis added) and to not allow it to merely be stayed.

80) further Stanley R. Stasko specifically asked the Honorable Judge Julian Abele Cook, Jr. of the U.S. District Court – E. D. of Michigan at the Status Conference on April 12, 2010, “how a judge in one court can order a withdrawal in a totally different district.” Judge Cook replied by stating “Well, I don’t understand it either, and that’s why I did not make a ruling on that. I had serious doubts in my mind in the absence of any showing of case authority or statutory authority that a judge can order a person to withdraw the allegation. The judge, I believe, has the right to enforce – or not enforce the statute, but I don’t know that there’s any law – and there may be. Maybe it exists, but I’m not aware of any law that permits such a person, such a judge, to order a litigant to withdraw the allegations.” (See Exhibit 1, Page 11, Lines 9 – 20)

81) still further the Appellee also fails to mention is that Judge Gerber purposefully publicly harasses the Appellant by stating “uniquely in my ten years as a judge, as a bankruptcy judge, and forty years as a lawyer, this is the first time that I’ve had a fellow or an entity who actually filed litigation after the bankruptcy case was filed and then asked for relief from the stay to continue in the filing of – or prosecution of a litigation that should never have been filed in the first place ... now, I’ll assume for the sake of discussion that you didn’t know about the bankruptcy when you filed the action in the Eastern District of Michigan, but once you heard about it, proceeding to try to get a default against the debtor was just dead wrong. And because you’re not a lawyer, I’m not going to use one of the stronger words that I would use, but that’s real bad, okay?”

(Bankruptcy Court Transcript of April 8, 2010; Page 40, Lines 2-8 and 18-24; Docket # 5509)

82) Judge Gerber should have known that the Appellant filing a Proof of Claim with the U.S. Bankruptcy Court – S. D. of New York via U.S. Mail on April 28, 2010, is insignificant when considering the Appellant is a Pro Se Litigant

### **CONCLUSION**

83) the Appellant's Original Legal Brief summarized fourteen reasons why Judge Gerber's Order should be voided


- a. Burden of Proof on Debtor
- b. Shall Grant Relief from Stay for Cause
- c. District Court Higher than Bankruptcy Court
- d. Civil Suit is a Non-Core Bankruptcy Proceeding
- e. Civil Suit has its Genesis in CY2005
- f. Mental Disability
- g. Genesis of Civil Action: Pre-Civil Suit Meeting
- h. Discovery Delays
- i. Fraudulent Concealment by General Motors
- j. Pro Se Litigant – Less Stringent Standard
- k. Some Evidence for Modification of Final Injunction after an Extended  
Period of Time
- l. Sonnax Factor (2)
- m. Sonnax Factor (11)
- n. Sonnax Factor (9)

84) therefore the Bankruptcy Judge Order to withdraw civil suit Stasko v General Motors Corporation from the U.S. District Court – E. D. of Michigan should be voided.

85) further the Appellant asks the U.S. District Court – S. D. of New York to reverse the Order by the Bankruptcy Judge Denying Motion of Stanley R. Stasko for Relief from the Automatic Stay

86) and grant the Appellant's Motion for Relief from the Automatic Stay.

Dated: December 28, 2010

  
\_\_\_\_\_  
Stanley R. Stasko  
27653 Lexington Pkwy Southfield, Michigan 48076  
Telephone # 313-670-6917  
Pro Se Litigant

This legal document was prepared by Stanley R. Stasko (Pro Se Litigant).

Exhibit - 6

B 10 (Official Form 10) (04/10)

<b>UNITED STATES BANKRUPTCY COURT Southern District of New York</b>		<b>PROOF OF CLAIM</b>
Name of Debtor <b>Motors Liquidation Company (f/k/a General Motors Corporation)</b>		Case Number <b>09-60026 (REG)</b>
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Name of Creditor (the person or other entity to whom the debtor owes money or property) <b>Stanley R. Stasko</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent <b>Stanley R. Stasko</b> <b>27653 Lexington Pkwy</b> <b>Southfield, Michigan 48076</b>  Telephone number <b>(313) 670-6917</b>		
Name and address where payment should be sent (if different from above) <b>Stanley R. Stasko</b> <b>27653 Lexington Pkwy</b> <b>Southfield, Michigan 48076</b>  Telephone number <b>(313) 670-6917</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ <u>2,778,288.00</u> <b>Final amount by U.S. District Court - E.D. Michigan</b> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim:  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B)  <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4)  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5)  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7)  <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8)  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)( ): _____  Amount entitled to priority: \$ _____
2. Basis for Claim: <u>Civil Law Suit; Case #2:09-CV-14827; E.D. Michigan.</u> (See instruction #2 on reverse side)  3. Last four digits of any number by which creditor identifies debtor: <u>4827</u> <b>Last four digits from Case #2:09-CV-14827</b> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)  4. Secured Claim (See instruction #4 on reverse side) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information:  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Describe: _____  Value of Property: \$ _____ Annual Interest Rate: _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, _____ If any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. Copy of Complaint and Exhibits from Civil Suit Case #2:09-CV-14827 U.S. District Court - E.D. Michigan. If the documents are not available, please explain: <b>filed with Motion for Relief from Automatic Stay</b>		
Date: <u>04/25/2010</u> Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <b>Stanley R. Stasko</b> 27653 Lexington Pkwy Southfield, Michigan 48076; #313-670-6917 <b>Pro Se Litigant</b>		<b>FOR COURT USE ONLY</b>  <b>APR 30 2010</b>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571